

**COMMONWEALTH OF MASSACHUSETTS**

**DEPARTMENT OF CORRECTION**

**103 DOC 270**

**LABOR RELATIONS - EMPLOYEE GRIEVANCE PROCEDURES**

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<b>MASSACHUSETTS DEPARTMENT OF CORRECTION</b>	<b>DIVISION: ADMINISTRATION</b>
<b>TITLE: LABOR RELATIONS - EMPLOYEE GRIEVANCE PROCEDURES</b>	<b>NUMBER: 103 DOC 270</b>

**PURPOSE:** To establish Department of Correction ("Department") policy concerning employee grievance procedures.

**REFERENCES:** M.G.L., Chapter 124, Section 1 (c) and (q).

**APPLICABILITY:** Staff

**PUBLIC ACCESS:** YES

**LOCATION:** Department's Central Policy File  
Each Institution's Policy File  
Department's Personnel Policy Manual

**RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:**

- Director of Employee Relations
- Assistant Deputy Commissioners.
- Superintendents and Division Heads.

**EFFECTIVE:** 7/29/2009

**CANCELLATION:** 103 DOC 270.00 cancels all previous department policy statements, bulletins, directives, orders, notices, rules or regulations regarding employee grievance procedures which are not consistent with this policy.

**SEVERABILITY CLAUSE:** If any part of 103 DOC 270.00 is, for any reason held to be in excess of the authority of the Commissioner, such decision shall not affect any other part of this policy.

## **270.01      DEFINITIONS**

Bargaining Unit Employee: An employee of the Commonwealth in a job title in a statewide bargaining unit, as certified by the Division Labor Relations, who is covered by an applicable collective bargaining agreement.

Confidential Employee: A non-managerial employee whose position has been designated confidential by the Chief Human Resources Officer of the Human Resources Division, and who directly assists a manager and acts in a "confidential" capacity to a managerial or other category of employee excluded from coverage under M.G.L. Chapter 150E.

Management Employee: An employee so designated in accordance with the provisions of M.G.L., Chapter 150E who (a) participates to a substantial degree in formulating or determining policy, or (b) assists to a substantial degree in preparation for the conduct of collective bargaining, or (c) has substantial responsibility, not initially in effect, in the administration of collective bargaining agreements or in Personnel Administration. A management employee is not included in a bargaining unit.

## **270.02      GRIEVANCE PROCEDURE**

1. A bargaining unit employee and/or the employee's union may file a grievance in accordance with the following four (4) step procedure:
  - a. Step I: Superintendent/Division Head - An employee and/or the union shall submit a grievance in writing or in the case of bargaining unit 7 by facsimile machine to the person designated by the agency head for such purpose not later than twenty-one calendar days after the date on which the alleged act or omission giving rise to the grievance occurred or after the date on which there was a reasonable basis for knowledge of the occurrence. The person so designated by the agency head shall reply in writing by the end of seven (7) calendar days following the date of submission. In the case of bargaining unit 1, 2, 3, 4, 4A, 6, 8 and 10 employees, the designated person shall reply in writing by the end of twenty-one (21) calendar days following the date of submission of the grievance, if a meeting is held to review the grievance.
  - b. Step II: Commissioner of Correction or a Designee - In the event the employee or the union wishes to appeal an unsatisfactory decision at Step I, the appeal shall be

presented in writing to the person designated by the agency head for such purpose within ten (10) calendar days or in the case of bargaining units 8 & 10 ten (10) business days following the receipt of the Step I decision. The agency head or a designee shall meet with the employee and/or the union for review of the grievance and shall issue a written decision to the employee and/or the union within fourteen calendar days following the day on which the appeal was filed.

- c. Step III: Human Resources Division - In the event the employee or the union wishes to appeal an unsatisfactory decision at Step II, the appeal must be presented to the Department's Human Resources Division ("HRD") within seven (7) calendar days of the receipt of the unsatisfactory decision in the case of bargaining unit 4 and 9 employees, or within ten (10) calendar days of the receipt of the unsatisfactory decision in the case of bargaining unit 1, 2, 3, 4A, 6, 7, 8 and 10 employees. HRD shall issue a written reply by the end of twenty-one (21) calendar days following the day on which the appeal was filed in the case of bargaining unit 4, 7 and 9 employees, or thirty (30) calendar days following the day on which the appeal was filed in the case of bargaining unit 1, 2, 3, 4A, 6, 8 and 10 employees. If a conference is held, HRD shall reply by the end of fourteen (14) working days following the close of the conference in the case of bargaining unit 4, 7 and 9 employees, or by the end of twenty-one (21) calendar days following the close of the conference in the case of bargaining unit 1, 2, 3, 4A, 6, 8 and 10 employees.

**NOTE:** The Commonwealth has agreed to Alternative Dispute Resolution Programs with the Alliance, National Association of Government Employees ("NAGE") and the Massachusetts Correction Officers Federated Union ("MCOFU") which may include the use of either (a) third-party neutral or (b) a tripartite panel at the Step III grievance level. The specific procedures to be followed under the Alternative Dispute Resolution Program can be found in Attachment A, B and C.

- d. Step IV: Arbitration - Grievances unresolved at Step III may be brought to arbitration solely by the union by filing a completed Request for Arbitration Form with the HRD within fourteen (14) calendar days in the case of bargaining unit 9 employees; or within thirty calendar (30) days in the case of bargaining unit 1, 2, 3, 4, 4A, 6, 7, 8 and 10 employees.

**NOTE:** A bargaining unit 1, 3 or 6 employee and/or the employee's union filing a grievance at the Step I, II or III level shall submit said grievance on the grievance form in Appendix C of the applicable collective bargaining agreement between the NAGE and the Commonwealth. A bargaining unit 1, 2, 3, 4A, 6, 8 or 10 employee and/or the employee's union filing a grievance at the Step I, II, or III level shall submit said grievance on the grievance form in the Appendix of their respective collective bargaining agreement.

## 2. Appeals of Disciplinary Action

- a. Any bargaining unit 1, 2, 3, 4A, 6, 8, 9 or 10 employee who has completed a six (6) month probationary period, (three (3) years for teachers) who is discharged, suspended or demoted for disciplinary reasons may file a grievance as follows:
  - I. In the event that the employee was not given a departmental hearing prior to the imposition of discipline or discharge, then a grievance shall be submitted in writing by the aggrieved employee to the Commissioner of Correction within eight (8) working days of the date such action was taken in the case of a bargaining unit 1, 3, 4A or 6 employee or within ten (10) working days of the date such action was taken in the case of a bargaining unit 2, 8, 9 or 10 employee, and said grievance shall be treated as a Step II grievance.
  - II. In the event that the employee was given a departmental hearing prior to the imposition of discipline or discharge, then a grievance shall be submitted in writing by the aggrieved employee to the Commissioner of Correction within ten (10) working days of the date such action was taken. Upon receipt of the grievance at Step II, the Commissioner or a designee shall review the actions taken at the lower level and shall either:
    - b. Hold a full Step II conference and the provisions of the grievance procedure shall apply.
    - c. Issue a written decision to waive the grievance to Step III and the provisions of the grievance procedure shall apply.

**NOTE:** The waiver of the Right to Appeal Disciplinary Action on the applicable grievance form shall be signed by both the employee and the Union as a condition precedent to submitting a disciplinary grievance.

- d. Any bargaining unit 4 employee who has completed a six (6) month probationary period (nine (9) months for entry level correction officers) who is discharged, suspended or demoted for disciplinary reasons may file a grievance within eight (8) working days of the date such action was taken. Any bargaining unit 7 employee who has completed a six (6) month probationary period who is discharged, suspended or demoted for disciplinary reasons may file a grievance within ten (10) working days of the date such action was taken. Any bargaining unit 9 employee who has completed a six (6) month probationary period who is discharged, suspended or demoted for disciplinary reasons may file a grievance within ten (10) working days of the date such action was taken. In the event that the employee was not given a prior Departmental hearing, the grievance shall be submitted to the Commissioner of Correction and it will be treated as a Step II grievance as described in Subsection 1 (b). If a prior Departmental hearing was held, the grievance shall be submitted to the HRD, and it shall be treated as a Step III grievance as described in subsection 1 (c).
- e. If the bargaining unit employee holds permanent civil service status, he/she may appeal the disciplinary action taken against him/her to the Civil Service Commission in accordance with the provisions of M.G.L., Chapter 31, Section 43.
- f. An employee may not appeal under both the contractual grievance and to the Civil Service Commission. If he/she chooses to appeal under the grievance procedure, then he/she must waive any and all rights to appeal the disciplinary action to any other forum.

### **270.03**      **TIME LIMITS IN GRIEVANCE PROCEDURE**

- 1. If a decision satisfactory to the union at any level of the grievance procedure other than Step IV, is not implemented within a reasonable time, the union may re-institute the original grievance at the next step of the grievance procedure. A resolution of a grievance at either Step I or II shall not constitute a precedent.

2. If the employer exceeds any time limits prescribed at any step in the grievance procedure, the grievant and/or the union may assume that the grievance is denied and invoke the next step of the procedure; except, however, that only the union may request impartial arbitration. No deadline shall be binding on the grievant and/or the union until a required response is given.
3. Any step or steps in the grievance procedure, as well as time limits prescribed at each step of this grievance procedure, may be waived by mutual agreement of the parties in writing.

#### **270.04      MANAGEMENT AND CONFIDENTIAL EMPLOYEES**

Management and confidential employees are not included in any bargaining unit and thus are not afforded the protection of the aforementioned contractual grievance procedure; however, there shall be an informal grievance procedure for all management and confidential employees, consisting of the following:

1. If any management or confidential employee has a grievance relative to the general conditions of his/her employment, he/she shall submit a description of said grievance in writing to his/her immediate supervisor. This supervisor shall schedule an informal meeting with said employee in order to discuss and resolve the grievance. Said supervisor shall respond to the employee within a reasonable time period.
2. If an employee is dissatisfied with the discussion and resolution recommended by his/her immediate supervisor, he/she may then submit a description of said grievance in writing to the superintendent (for institution employees) or the Commissioner (for all central office and/or major division employees). The superintendent and/or the Commissioner may take whatever action he/she deems appropriate to discuss and resolve said grievance. (For example; he/she may: a) agree with the decision of the employee's immediate supervisor and decline from making his/her own separate recommendations, b) schedule an informal meeting with the employee to discuss the grievance, c) hold a formal meeting or investigation to resolve said grievance, etc.). All such institutional employees may, in the same way, re-submit their grievances for final consideration to the Commissioner, who shall have the same options outlined above.
3. There is a separate and distinct informal grievance procedure for all management and confidential employees, established in M.G.L., Chapter 30, § 53 and the Commonwealth rules and



regulations pursuant to said statute, for any grievance "...relating to classification, hours of employment, vacation, sick leave, or other forms of leaves of absences, overtime, denial of step-rate increase, and other matters relating to conditions of employment..." This procedure provides for an appeal and hearing process on such matters to the State Personnel Administrator and the Civil Service Commission. However, no grievance relative to disciplinary action taken against an employee shall be accepted by said offices under this statute.

4. If a management or confidential employee holds permanent civil service status, he/she may appeal the disciplinary action taken against him/her to the Civil Service Commission in accordance with the provisions of M.G.L., Chapter 31, § 43.

**ATTACHMENT A**  
**ADR AGREEMENT WITH ALLIANCE**

**The Commonwealth and the Alliance, including AFSCME Council 93, SEIU Local 509, SEIU Local 254 and SEIU Local 285, hereby agree that the following process may be used to resolve grievances at the Step III level of the grievance procedure.**

1. Pursuant to item number 27 of this Agreement, partners of the Alliance may request a hearing before either a) third-party Neutral or b) a Tripartite panel.
2. The Tripartite or third-party Neutral session will be held in lieu of a Step III conference.
3. All cases presented to and decided by a third-party Neutral or a Tripartite panel are final and binding and may not be the subject of arbitration.
4. Tripartite and third-party Neutral decisions are non-precedent setting.
5. The hearing officer presiding at the third-party Neutral session shall be a neutral person jointly selected by the employer and the union.
6. Members of the Tripartite panel shall include: a Neutral who has been jointly selected by the parties, one representative of OER, and one non-elected staff person from the Union.
7. Fees charged by the selected neutral shall be paid equally by labor and management.
8. The Union's request for a Tripartite or a third-party Neutral conference shall be on a form which also contains a waiver signed by the grievant which states that he/she understands the panel's decision is final and binding and that he/she waives any right to file for arbitration. The request and form may be submitted along with the grievance or within a reasonable length of time following the submission of the grievance.
9. Step III Grievance filing and waiver requirements established pursuant to Articles 23 and 23A of the Agreement are not affected by this procedure.

10. Management will review the union's requests for a Tripartite or third-party Neutral conference and select those it supports for ADR.
11. Termination cases and client abuse cases shall be excluded from Tripartite or third-party Neutral consideration.
12. In attendance at the conference, apart from the Neutral, management and union representative, will be one person to make the department's presentation along with a representative of the facility or subdivision involved, and one person to make the presentation for the union along with the grievant. Either management or the union may request the attendance of one other person if necessary and relevant.
13. Any material which the parties may wish to submit for consideration must be presented to the designated union and management representatives as well as the Neutral seven days in advance of the scheduled conference.
14. Either at the conference or in advance, the union and/or management may present the third-party Neutral or Tripartite panel with a short statement of their position.
15. Each party shall be fully prepared and ready to go forward according to schedule. All prep sessions must take place prior to the scheduled Tripartite session.
16. Third party Neutral, and Tripartite hearings shall be conducted similarly to those of a Step III conference in that:
  - There are no formal rules of evidence
  - There shall be no cross-examination of the parties, however, either side may ask questions of clarification through the Neutral.
  - The Neutral may ask any question he/she deems relevant and necessary in the decision-making process.
17. There are no post-conference briefs.
18. The Neutral may, prior to, during or following each presentation, meet with the parties informally to discuss matters relevant to the grievance including mediation and or settlement recommendations. The Neutral may not compel a settlement.

19. The department will have at the hearing, or immediately available, a decision making authority in the event a settlement is proposed.
20. Labor and management shall meet monthly to review the process and make any minor modifications deemed necessary. There will be formal review of the program after six months with possible revisions to the program resulting.
21. For the first six months, the Neutrals should be trained arbitrators who are familiar with the Commonwealth and its cases.
22. After six months, the parties will consider using other mutually selected third parties.
23. The vote of each individual panel members may not be discussed or reported outside of the deliberation.
24. Tripartite or third-party Neutral sessions shall be scheduled at a rate of three days per month with one day devoted to Council 93, one day devoted to Local 509; one-half day each to Locals 254 and 285.
25. Each conference should take sixty-five minutes: twenty minutes per presentation with a five minute response and fifteen minutes deliberation:

9:10-10:15; 10:30-11:35; 11:50-12:55; (lunch 12:55-2:00)  
2:05-3:10; 3:25-4:30

26. For six months from date of implementation, the following ADR procedures will be used for the identified Unions:

**SEIU, Local 509**      The Department and Union presentation shall be made to a Tripartite panel consisting of one Neutral: one non-elected Union staff person; 1 person designated by the Employer. The Tripartite shall rule on the grievance by majority vote.

**AFSCME, Council 93**      Same three person panel as above. The department and the union make the grievance presentation. Following the presentation, the management and union panel members will make final arguments to the Neutral. The Neutral shall make the final decision on the grievance.

**Locals 254 and 285** The Neutral will hear presentation by the union and department representatives and issue a decision.

27. The decision, which shall be a paragraph in length, will be mailed out by the next day unless otherwise agreed by parties.
28. While only the union may request ADR for a filed grievance, nothing shall prohibit the department or employer from suggesting that a particular case may be appropriate for ADR.
29. This Agreement will expire on June 30, 1997, unless extended by parties in writing.

Signed:

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For the Alliance/AFSCME,  
Council 93

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For the Commonwealth  
of Massachusetts

\_\_\_\_\_  
For the Alliance/SEIU, Local 509

\_\_\_\_\_  
For the Commonwealth of  
Massachusetts

\_\_\_\_\_  
For the Alliance/SEIU, Local 254

\_\_\_\_\_  
For the Alliance/SEIU, Local 285

Date \_\_\_\_\_

**ATTACHMENT B**  
**MEMORANDUM OF AGREEMENT**  
**BETWEEN**  
**THE COMMONWEALTH OF MASSACHUSETTS**  
**AND THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES**  
**REGARDING**  
**AN ALTERNATIVE DISPUTE RESOLUTION POLICY AND PROCEDURE**

The Commonwealth of Massachusetts, through the Human Resources Division (HRD) and the National Association of Government Employees (NAGE) hereby agree that the following policy and procedure for an Alternative Dispute Resolution (ADR) Program may be utilized to resolve contractual disputes after Step II of the grievance procedure. The parties agree as follows:

1. In lieu of NAGE filing a grievance at Step III of the grievance procedure, NAGE may request a conference before a Tri-Partite Panel or a Third Party Neutral.
2. Grievances filed by NAGE at Step III or Step IV of the grievance procedure, as of the date of the signing of this Agreement, may be brought to the Tri-Partite Panel or a Third Party Neutral upon the mutual consent of the Commonwealth and the affected Department/Agency. (Existing Cases)
3. The Tri-Partite Panel shall be comprised of one (1) Representative of the Human Resources Division (HRD), one (1) Representative from NAGE and a Neutral Person jointly selected by the Commonwealth and NAGE.
4. All fees of the Neutral shall be paid by funds established through the Collective Bargaining Agreement. However, in no event shall an arbitrator submit fees for work performed subsequent to the Conference.
5. NAGE's request for a Tri-Partite Panel or a Third Party Neutral shall be on a form which also contains a waiver signed by the grievant stating that he/she understands the Panel's decision is final, binding and non-precedent setting and that he/she waives any right to file a grievance at Step III or Step IV.
6. The Commonwealth and the Department/Agency affected will review NAGE's requests for a Tri-Partite Panel or a Third Party Neutral and select those it deems appropriate for ADR. While only NAGE may request ADR for a grievance filed, nothing

shall prohibit the Department or the Commonwealth from suggesting that a particular case may be appropriate for ADR.

7. Upon the selection of a Tri-Partite Panel or Third Party Neutral, NAGE and/or the grievant(s) are prohibited from pursuing the grievance at Step III or Step IV under the grievance procedure in Article 23 of the Collective Bargaining Agreement. Termination and abuse grievances shall be excluded from Tri-Partite Panel or Third Party Neutral consideration.
8. Attendees at the Conference will be the NAGE representative and grievant. Also present will be the Department/Agency employee-relations designee along with a representative of the facility or subdivision involved. Either the Commonwealth or NAGE may request the attendance of one (1) other person to provide evidentiary or testimonial support. Each party shall be prepared and ready to go forward with their respective arguments. All preparatory sessions must take place prior to the scheduled ADR Conference.
9. The parties will have at the hearing or immediately available, a decision-making authority in the event a settlement is proposed.
10. Any material which the parties wish to submit for preliminary review may be presented to the designated NAGE and HRD representatives, as well as the Neutral, seven (7) calendar days in advance of the scheduled conference.
11. At the Conference NAGE and/or the Commonwealth shall present the Tri-Partite Panel with a short statement, either in writing or verbally, of their position.
12. Tri-Partite Conference or a Third Party Neutral shall be conducted in a manner similar to a Step III grievance Conference in that:
  - a. There are no formal rules of evidence;
  - b. There shall be no cross examination of the parties or witnesses if any;
  - c. Clarifying questions deemed necessary and relevant may be asked of either party through the Neutral; and
  - d. Any Tri-Partite Panel member may ask any question that he/she deems relevant and necessary to the matter at hand.
13. No post Conference briefs are permitted.

14. Each Conference shall take approximately 60 minutes. However, in no event shall a Conference exceed one and one-half (1 ½) hours in duration.
15. The Neutral may, prior to, during or following each presentation, meet with the parties informally to discuss matters relevant to the grievance including mediation and or settlement recommendation. The Neutral may not compel a settlement.
16. Resolution of the matter shall be by a majority vote of the Tri-Partite Panelists when a panel is used. Deliberations and the vote of each individual panel member are confidential and may not be discussed or reported outside of the deliberation.
17. The decision shall be composed and signed solely by the Neutral. It will be one (1) paragraph in length and shall be mailed to the participating parties by the next business day unless otherwise agreed to by the parties.
18. The Commonwealth and NAGE will meet on an as needed basis to review the process and make any necessary modifications. There will be a formal review of the program after six (6) months where the parties shall consider, and, if mutually agreeable, adopt revisions to the program.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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NAGE

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The Commonwealth of Massachusetts

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The Commonwealth of Massachusetts

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August 2015